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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,353

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EXAMINER

ALIE, GHASSEM

ART UNIT

PAPER NUMBER

3724

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,353

Applicant(s)

NYSTROM ET AL.

Examiner

Ghassem Alie

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above claim(s) 7-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/10/07 has been entered, wherein claims 1, 3, 4-12 and new claims 13-19 are pending claims. However, claims 1 and 3-6 have been examined and claims 7-12 have been withdrawn from consideration in the Final Office Action mailed On 04/10/07. Therefore, the status identifier of claims 7 and 9 which is "currently amended" should be --currently amended, withdrawn-- and the status identifier of claims 8 and 10-12 which is "previously presented" should be --withdrawn--. Newly submitted claims 13-19 have not been submitted with the original application and have not been originally considered by the Examiner.

Election by Original Presentation

2. Newly submitted claims 13-19 are directed to inventions that are independent or distinct from the invention originally claimed for the following reasons: Original claims 1 and 3-6 (Group I) and claim 13 (Group II) are distinct inventions as a product and process of making the product. Original claims 1 and 3-6 (Group I) and claims 14-19 (Group III) are distinct inventions as subcombinations usable together in a single combination.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1 and 3-6, drawn to an a handle for handheld engine including a safety button that has an arm and stops the operator from increasing the throttle of the

Art Unit: 3724

engine if the operator is not holding his hand around the handle and the safety button is not pressed, classified in class 30, subclass 166.3.

II. Claim 13, drawn to a method for assembling two-halves of a handle including the steps of providing a line wheel and securing line wheel to one of the handle sections, classified in class 83, subclass 13.

III. Claims 14-19, drawn to a handle for a handheld engine powered tool including three pivotable elements, wherein each of the pivotal elements pivotally connected to only one of the handle sections so that the functions of the pivotable elements are separated from the position of the other handle section, classified in class 30, subclass 382.

It should be noted that dependent claims 7-12 have been already withdrawn from consideration in the Final Office Action mailed on 04/10/07 as being directed to non-elected inventions. Therefore, there is no need to include claims 7-12 with Group I. However, invention I with or without claims 7-12 is distinct from other two inventions II-III.

4. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product that does not include a safety button that has an arm and stops the operator from increasing the throttle of the engine if the operator is not holding his hand around the handle

and the safety button is not pressed. In addition, the product as claimed can be made by another and materially different process that does not require the steps of providing a line wheel and securing line wheel to one of the handle sections.

5. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, e.g., subcombination I has a separate utility such as it could be used without the three pivotable elements set forth in invention II. Conversely, subcombination III has a separate utility such as it could be used without the safety button that is provided with an arm and stops the operator from increasing the throttle of the engine if the operator is not holding his hand around the handle and the safety button is not pressed, as set forth in invention I. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Therefore, since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7-12 and newly added claims 13-19 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the safety button 13 connected to the handle section 16 via a supporting section 20 set forth in claim 5; lever 12 connecting to the handle section 16 by a pin 25 set forth in claim 7; lever 12 secured to the plastic pin 13 and button 13 secured the plastic pin 31 as set forth in claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It should be noted that every claimed Species or embodiment has to be shown in the drawings. The specification may contain many embodiments that are not shown in the drawings.

However, when those embodiments are claimed, they must be shown in the drawings.

7. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 2 show(s) modified forms of construction in the same view. Fig. 2 shows two different structures for connecting lever 12 to the handle section 16. However, different embodiments cannot be shown in a single figure. Fig. 2 does not show where the lever 12 is connected. Fig. 2 does not illustrate whether lever 12 is connected to the support 20 or pin 31.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description

of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8. The amendment filed 07/10/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In Fig. 2, connection of wire or line 50 to the lever 12 add new matter to the disclosure. It should be noted that the original disclosure is not disclosing the exact location of the wire or line 50. The original disclosure does not specify the exact location on the lever 12 where the wire or the line 50 is connected to. The original disclosure also does not disclose the length and the size of the line. The corresponding reference number in paragraph in page 6, line 7 should be deleted.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 1 and 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, "the lever (12) and the button (13) are each pivotally secured in only one of the handle sections (16) so that the functions of the lever (12) and the button (13) are each separate from alignment of the other handle section relative to the one handle section (16)" is not accurate. It should be noted that the position of the handle 15 or 16 does not change, since the both handle sections 15, 16 are secured together. Therefore, functions of the lever and the button cannot be independent or separate from one of the handle sections, since both handle sections are permanently joined together. In addition, functions of the lever and the button cannot be independent or separate from the alignment of the handle sections, since the handle could be permanently joined together in a manner that at least limit the functions of the lever and/or the button. For example, if the handle section 15 is permanently attached to an element of the lever 12 such as arm 17, the lever 12 will not function properly. Regarding claim 5, it is not clear which handle section has been claimed. It should be noted that there are two handle sections present in claim 1.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1 and 3-5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe et al. (5,738,064), hereinafter Lowe, in view of Wolf (5,215,049), and in further view of Nakayama (5,517,967). Regarding claim 1, as best understood, Lowe teaches

Art Unit: 3724

a handheld engine powered tool 10 including a lever 38 a button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teach that the lever and the button are pivotally connected to the handle and the button has an arm that is movable when the button is pressed. However, the use of throttle lever and safety switch pivotally connected to a handle of a power tool is well known in the art such as taught by Wolf. Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that lever 16 and the button 17 are pivotally secured to a handle. It would have been obvious to a person of ordinary skill in the art to provide Lowe's lever and button with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

Lowe in view of Wolf does not explicitly teach that the lever and the button are pivotally secured to only one of the handle portions. However, Nakayama teaches a handle 12 including two handle portions 12a. Nakayama also teaches a lever 20 and a lever lock or safety button are pivotally attached to only one of the handle portions 12a. See Figs. 1-3 and

col. 3, lines 36-40 in Nakayama. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified by Wolf, with the pivoting mechanism, as taught by Nakayama, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts.

Regarding claim 3, Lowe teaches everything noted above including that the handle sections 48, 50 are made of plastic material and permanently joined together either by welding or gluing. See col. 3, lines 6-16 in Lowe.

Regarding claim 4, Lowe, as modified above, teaches everything noted above including that the button 17 stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf.

Regarding claim 5, as best understood, Lowe, as modified above, teaches everything noted above including that one the lever 20 is secured to the handle section 12a via a supporting section extending from the handle section 12a. It should be noted that the handle inherently has a support member with a hole for receiving the pin 14. See Fig. 1 in Nakayama.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable Lowe in view of Wolf and Nakayama, as applied to claim 5, and in further view of Yoho et al. (3,494,431), hereinafter Yoho. Regarding claim 6, Lowe, as modified by Yoho, teaches everything noted above except that the support section is provided with a pocket, and a locking pin is inserted in a hole in the lever and two openings in the pocket. However, the use of different securing means or mechanisms for a trigger lever, button, or the like is old and well known in the art.

Art Unit: 3724

In this case, e.g., Yoho teaches a handle section 54B has a support section in a shape of a pocket. Yoho also teaches a pin 45 is inserted through the hole of a trigger 44 and in the two openings of the support section or the pocket. See Fig. 6 in Yoho. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified above, with a fastening or securing means, as taught by Yoho, in order to secure the lever to the handle section by an alternative mechanism that produces the same result and pivotally connects the lever to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

Response to Amendment

14. Applicant's arguments with respect to claim 1 and 3-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

Art Unit: 3724

for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ghassem Alie
Patent Examiner
Art Unit 3724

A handwritten signature in cursive script that reads "Ghassem Alie".

GA/ga

August 28, 2007